

# Notice of Allowability

Application No.

09/847,513

Examiner

Teresa E. Strzelecka

Applicant(s)

DELONG ET AL.

Art Unit

1637

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed April 27, 2006.
2. ☒ The allowed claim(s) is/are 1,4-6 and 39-44.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☒ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 6/30/06.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

Teresa E Strzelecka  
Primary Examiner  
Art Unit: 1637

### **DETAILED ACTION**

1. This office action is in response to an amendment filed April 27, 2006. Claims 1, 2 and 4-44 were previously pending, with claims 8-36 withdrawn from consideration. Applicants cancelled claims 2, 7-38 and amended claims 1, 4, 5, 6 and 39-44. Claims 1, 4-6 and 39-44 are pending and will be examined.
2. Applicants' amendments overcame the following rejections: rejection of claims 1, 2, 4-7 and 37-44 under 35 U.S.C. 112, first paragraph, written description and enablement; rejection of claims 2, 7, 37 and 38 under 35 U.S.C. 112, first paragraph, enablement; rejection of claims 1, 2, 5 and 37 under 35 U.S.C. 102(b) as anticipated by Kitajima et al.; rejection of claims 6, 39 and 41 under 35 U.S.C. 103(a) over Kitajima et al. and Shimono et al.; rejection of claims 40 and 42 under 35 U.S.C. 103(a) over Kitajima et al. and Shimono et al. in view of Zozulya et al.; rejection of claim 43 under 35 U.S.C. 103(a) over Kitajima et al. and Shimono et al. in view of Mollaaghababa et al.; rejection of claim 44 under 35 U.S.C. 103(a) over Kitajima et al. and Shimono et al. and Mollaaghababa et al. in view of Zozulya et al.
3. There are no outstanding rejections pending in the case.

### **EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Miriam Kaplan on June 30, 2006.

The application has been amended as follows:

- In claim 42, insert ---comprising the proteorhodopsin protein of claim 1--- after “41”.
- In claim 44, insert ---comprising the proteorhodopsin protein of claim 1--- after “43”.

### ***Reasons for Allowance***

5. The following is an examiner's statement of reasons for allowance: Applicants' invention is a nucleic acid encoding a proteorhodopsin protein comprising SEQ ID NO: 5 or SEQ ID NO: 7. No references were found teaching or suggesting such nucleic acids.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

### ***Deposit of Biological Material***

6. Applicants submitted a statement regarding the accessibility of deposit on April 27, 2006. However, the statement does not contain the deposit numbers for which the restriction on accessibility will be removed. To perfect the deposit a new statement needs to be submitted.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa E. Strzelecka whose telephone number is (571) 272-0789. The examiner can normally be reached on M-F (8:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on (571) 272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Teresa E Strzelecka

Primary Examiner

Art Unit 1637

*Teresa Strzelecka*

*7/7/06*